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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,752

02/08/2005

Klemens Kieninger

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2727

27799

7590

04/15/2008

COHEN, PONTANI, LIEBERMAN & PAVANE

551 FIFTH AVENUE

SUITE 1210

NEW YORK, NY 10176

EXAMINER

ITALIANO, ROCCO

ART UNIT

PAPER NUMBER

3746

MAIL DATE

DELIVERY MODE

04/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,752	<b>Applicant(s)</b> KIENINGER ET AL.	
	<b>Examiner</b> ROCCO ITALIANO	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/08/2005, 12/10/2007</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The frame of reference in which the applicant uses in order to explain the mixing tube's position in claims 3-5 is indistinct. The mixing tube's position is unclear in that the frame of reference is to its own axis.

In regards to claim 8, it is unclear as to the manner in which an element can be "integrally" formed on another element.

Claim 3 recites the limitation "the horizontal" in line 3. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

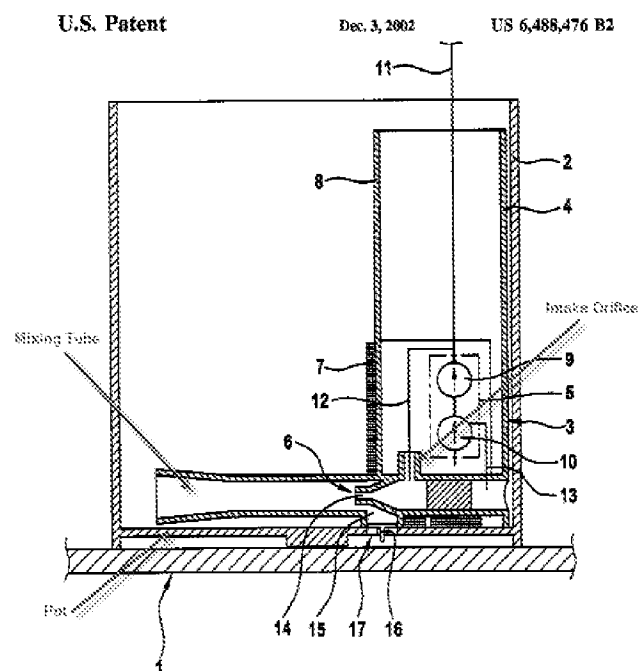
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6 and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Eck U.S. 2001/0055530 A1.

In regards to claim 1, Eck discloses a suction jet pump (6) comprising of a propulsion jet nozzle (14), which can be interpreted from Fig. 1 as structurally consisting of a round nozzle orifice as claimed. Eck discloses further a mixing tube; an intake orifice and a suction line (12) arranged thereon, wherein at least part of the mixing tube is arranged in a pot, assigned to a baffle (2) (see Fig. 1 labeled by examiner for clarity).



With respect to claim 2, the illustration of Fig.1 according to Eck discloses the outlet orifice of the mixing tube is arranged inside the pot (see Fig. 1 labeled by examiner for clarity).

In regards to claims 6 and 10, it can be seen in Fig. 1 according to Eck that the pot is connected to the suction jet pump (6). Furthermore, Fig. 1 illustrated that the pot is formed on a baffle (2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eck U.S. 2001/0055530A1 as applied to claim 1 above.

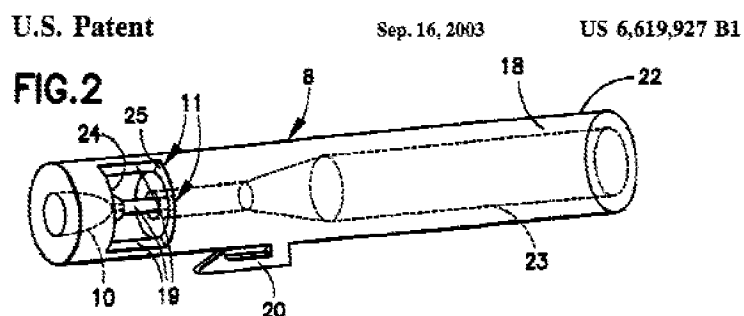
In regards to claims 3 and 4, as best understood, Eck discloses the claimed invention; however no explicit mention is made with regards to the vertical/horizontal arrangement of the mixing tube. However, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to position a suction jet pump wherein the mixing tube is arranged at an angle deviating from a designated horizontal axis or in a vertically arranged position, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japiske, 86 USPQ 70.

With respect to claim 5, Eck does not provide any specific statement whereby the angular relationship of the mixing tube is defined. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to determine an appropriate an angle at which to position the mixing tube, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

In regards to claim 8, Eck discloses the claimed invention; however no specific disclosure is made with regards to the pot being integrally formed on the suction jet pump. It would be obvious to one having ordinary skill in the art at the time of the invention was made to integrally form the element, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Works*, 150 U.S. 164 (1993).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eck U.S. 2001/0055530A1 as applied to claim 6 above, and further in view of Becker et al. U.S. 6,619,927 B1.

Eck provides no explicit detail as to a latch or plug connection as a means for connecting the pot and the suction jet pump as specified in claim 7. However, Becker et al. teaches of a ejector pump (8), or suction jet pump as described by the applicant, provided in a fuel tank of a motor vehicle whereby a latch or plug connection (20) is provided on the suction jet pump (8) ultimately enabling a connection means (see Fig. 2).



Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eck U.S. 2001/0055530A1 as applied to claim 8 above, and further in view of Ramamurthy et al. U.S. 2003/0213477.

In regards to claim 9, Eck provides no explicit detail as to welding or adhesively bonding the pot to the suction jet pump. However, Ramamurthy et al. teaches of fuel pump module including a reservoir having a jet pump whereby the jet pump is welded to the reservoir (see abstract). With this teaching, it would be obvious to one of ordinary skill in the art at the time of the invention to connect or bond the pot and the suction jet pump as disclosed by Eck through the means of welding as taught by Ramamurthy et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROCCO ITALIANO whose telephone number is (571)270-3761. The examiner can normally be reached on Mon - Fri 9-5 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon C. Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/  
Supervisory Patent Examiner, Art  
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Rocco Italiano  
Patent Examiner  
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R.I.  
03/31/2008



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